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No. 96-1260

In The
**SUPREME COURT OF THE UNITED STATES**
October Term, 1996

VERONICE A. HOLT
*Petitioner,*

v.

KMI-CONTINENTAL, INC.
*Respondent,*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

# PETITIONER'S REPLY BRIEF

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## I. PETITIONER RELIES UPON FACTS ADMITTED TO BY RESPONDENT KMI

Respondent entirely ignores the fact that Petitioner's factual assertions in the proceedings below were based upon Admissions[1] sworn to by the Respondent, submitted in their entirety in Petitioner's moving papers in the Courts below, and ignored in their entirety by the Courts below. (Appendix to Briefs ("App.") 769-932).

Respondent KMI repeatedly stated its willingness to stipulate that "except for conduct such as that set forth in the January 20, 1982 letter from Bermas to Holt, neither the plaintiff's competence nor her performance were at issue."[2] Nonetheless, KMI continuously denigrates Petitioner Holt throughout its Brief.[3]

### A. SALARY DISCRIMINATION

The quality of Respondent KMI's factual assertions are well illustrated by a constant emphasis on the alleged[4] 120

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[1] In the admissions, KMI is often referred to by its predecessors names, e.g. "Continental" or "CGI".

[2] See for example App.828, 829, 846, 847, 848, 849, 850, 854.

[3] KMI also stipulated that Holt was a "high potential employee" along with Conway and Sisley. (App.892, 894)

[4] KMI admits that Holt's salary was increased by $5,250 (10%) the day after she was terminated and that

per cent in salary increases. For example, in the chart below which covers the relevant period 1976-1982, Rein received both the highest dollar increase and percentage increase. While Sisley had a lower dollar and percentage increase, his salary was still $17,000 greater than Holt's before his bonus. [5]

| ATTORNEY | $INCREASE | PERCENT |
|---|---|---|
| Rein | $84,000.00 | 184.61% |
| Bermas | $48,500.00 | 78.86% |
| Conway | $42,496.00 | 121.40% |
| Holt[6] | $31,500.00 | 121.15% |
| Sisley | $24,503.00 | 54.45%[7] |

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the increase was made effective November 1, 1981. (App.871-872)

[5] The data used to produce these figures is taken from salary summaries agreed to by the parties and submitted as an attachment to Holt's Motion for Summary Judgment. (App.488-506)

[6] $7,000 of this increase was to rectify prior salary discrimination. While at CFI Holt and a white male Gerald Rubin were in the same job with the same title and responsibilities. Yet Rubin's job grade was A16 and Holt's was A12. (App.791-794)

[7] Respondent also attempts to mislead this Court by asserting by arguing that Bailey and Cunane, twowhite male attorneys, made less than Holt. Bailey and Cunane were in a lower job grade and salary classification.

As demonstrated by KMI's admissions below, Holt's comparatively low salary was the product of deliberate conscious decision making. KMI admitted that:

3. Effective April 1, 1980, Holt received a salary range classification of C-2.

4. The salary range for the salary grade C-2 position was $48,100 to $72,100. The salary proposed for Holt was approximately $3,100 (6.4%) below the minimum salary range for the position as established by Continental. [T]he Salary Change Proposal [stated] that Holt's salary would be below the minimum range, but that J.S. Luci, Vice President -- Human Resources and Rein had "decided ... not to bring the employee (Holt) up to minimum at this time." (App.824-825)

## B. THE MANAGEMENT INCENTIVE PLAN

The chart on page two grossly understates the salary differential between Holt and these white employees, all of whom received substantial bonus payments in excess of $10,000 pursuant to KMI's Management Incentive Plan (MIP). KMI made the following admissions regarding the MIP.

2. By memo dated April 13, 1978, Bruce Smart, President of the Continental Group, Inc. and Chief Operating Officer wrote *** (2) "B" level MIP to include all positions in grades C-1 through C-5.

3. The **Corporate Management Incentive Plan Guidelines for 1981 Participation** states:

"The basic determinant for participation level is the assigned grade in the salary structure. Current participation is determined by salary grade *** The grades and MIP levels are: *** B MIP (20% norm) - grades C-1 and C-5 (App.887-889)"

6. Holt was not granted participation in the Management Incentive Plan ("MIP"). ***

8. From 1/1/76 to 4/1/80, all attorneys in the corporate legal department with a salary grade C2 or higher were awarded participation in the Management Incentive Plan. (App.825-826) ***

16. **Holt was the first black person between 1976 and 1982 to be employed in a job with a salary grade of C2.** (App.894) ***

3. As of 1/1/1978, 53 of the Corporate staff employees were MIP/Bonus participants. 48 of 53 participants were white males. *** There were no black participants in the Management Incentive Plan. There were no black female participants in the Management Incentive Plan.

4. As of 1/1/79 *** 57 of the 62 participants were white males. *** One black male, William H. Moses [] was listed as a C-level MIP participant.

There were no black female participants in the Management Incentive Plan.[8] ***

6. As of 1/1/1980 *** 62 of the 67 MIP Bonus participants were white males. *** There were no black female participants in the Management Incentive Plan. [9] ***

12. *** All MIP bonus participants as of 1/1/1981 were white. 63 of the 64 participants were white males. There were no black participants in the Management Incentive Plan.

13. As of 1/1/1982, *** 61 of the 63 participants were white males. *** There were no black participants in the Management Incentive Plan.

14. As of 1/1/83 *** There were no black participants in the Management Incentive Plan.

15. As of 1/1/84 *** There were no black participants in the Management Incentive Plan. (App. 898-911)

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[8] Although KMI listed William Moses as a participant, KMI admits that a 1976 memorandum states "We had never given this incentive to Bill Moses..." (App.901)

[9] With respect to the one black male named a participant, Holt relied upon documents indicating he never received a bonus. Although KMI asserted that he received a bonus, it has not produced such records. (App.901-905)

## C. TERMINATION OF HOLT'S EMPLOYMENT

Defendant admitted that:

1. On or about December 10, 1981, Holt filed a charge of employment discrimination with the [CCHRO] and [EEOC] alleging that Continental had retaliated against her for filing a charge of employment discrimination...***

2. The defendant states that its records indicated that in early January of 1982 Bermas asked Holt to give him a list of the work she could foresee taking place within her area of responsibility in the next six months and to approximate the amount of time each project would take.

3. On or about January 5, 1982, Holt sent a memorandum titled Filing Assignments to S. Bermas. ***

6. On January 8, 1982, Holt filed a written complaint to Continental's Personnel Department in a memorandum titled "Retaliation for Filing EEO Complaint."

8. By letter dated January 20, 1982 Bermas [Holt's immediate superior] informed Holt that she had been terminated. The letter stated the following reasons for her termination:

1. You have pre-empted Company facilities to work on a personal matter and delayed the work of another lawyer in the Department seeking to meet a deadline on an Company assignment.

2. Without consulting either Mrs. Rein or me, you called Willkie, Farr & Gallager and directed them not to perform work the General Counsel had specifically asked them to do.[10]

3. You called Skadden, Arps, Slate, Meagher & Flom to ask them to perform work previously assigned by the General Counsel to another law firm, again without consultation.[11]

4. You have insisted on setting your own work assignments without regard for my instructions and have interfered with the work assignments of other lawyers.

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[10] In fifteen years of litigation, KMI has never produced admissible evidence that Holt engaged in this conduct. Holt has steadfastly sworn under oath that she did not do this. On the one occasion when Holt subpoenaed the lawyer at Willkie Farr with whom she had the conversation, KMI successfully quashed the subpoena.

[11] KMI has never proffered any admissible evidence regarding these alleged conversations even though Skadden Arps defended KMI in the state proceedings.

5. You have refused on several occasion to discuss with me your work assignments and your treatment of others so that it has been impossible to maintain appropriate working relationships in the Department.

6. You have harassed other lawyers in the Department by dealing with them in an unprofessional, personally insulting manner.

7. Your behavior has taken up a disproportionate amount of your supervisors' time which should have been spent on more productive matters.

8. Without prior notice or approval, you have failed to report to work due to personal business.[12]

25. Between 1976 and 1982, no other attorney has ever been summarily involuntarily separated from employment in Continental's corporate legal department." (App.868-878)

Item number one in the termination letter is the memorandum that Holt typed to KMI's Personnel Depart-

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[12] Plaintiff was absent because her apartment was burglarized. The defendant was aware of Holt's absence and the reason for it. Indeed, her termination letter was sent to her sister's address in Washington, D.C. where Holt had gone to take a couple days off after returning home to find her house burglarized.

ment (App.240) to complain about her superiors efforts to remove her supervisory responsibilities from her job description after the filing of her charges. In a sworn affidavit, Bermas stated:

> "Holt's draft of a proposed job description has never been adopted by CGI. It is a document that she drafted herself because she insisted that she wanted her duties and responsibilities to be set down. " (App.241)

KMI now admits that on October 22, 1981, Bermas sent the job descriptions, including Holt's, to each of the lawyers employed on the corporate staff. (App.851) The description for Holt's position as Securities Counsel stated in part.

> "OVERALL RESPONSIBILITY for legal aspects of securities law compliance, financing matters and financial reporting. These functions are to be performed either directly or in a supervisory capacity." (App.852)

More importantly, KMI now admits "its records indicate that the criteria for [Holt's] performance review are similar to the objectives and responsibilities stated in the Securities Counsel job description." (See App. 866)

## CONCLUSION

Holt presented substantial evidence, both direct and circumstantial, which demonstrated that she could meet her burden of proof pursuant to ***St. Mary's Honor Society v. Hicks,*** 509 U.S. 502 (1993) and ***Anderson v. Liberty***

*Lobby* 477 U.S. 242 (1986). This Court should grant the writ and reverse the decision of the Second Circuit. The fair enforcement of Title VII requires that lower courts not define the truth for summary judgment purposes as being limited to what the employer states.

April 27, 1997

Respectfully submitted,

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